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REMARKS/ARGUMENT 3

The Examiner subjected claims 1-12 to a restriction requirement. The Examiner stated that the application contains claims directed to the following patentably distinct inventions:

- I. Claims 1-6 and 8-11, drawn to methods for determining exercise diagnostics parameters, classified in class 600, subclass 519; and
- II. Claims 7 and 12, drawn to implantable cardiac devices, classified in class 600, subclass 509.

The Examiner required Applicant under 35 U.S.C. §121 to restrict the application to one of the above inventions.

Applicant has elected Group I for prosecution on the merits, without traverse. Examiner further stated that the application contains claims directed to the following patentably distinct species if Group I is elected:

- I. the embodiment of determining a maximum observed heart rate of a patient during exercise (see Claims 1-6); and
- II. the embodiment of determining a workload of a patient during exercise that is obtained without determining a maximum observed heart rate (see claims 8-11 and Applicant's disclosure page 24).

Applicant has elected Species I for prosecution on the merits, without traverse and has accordingly withdrawn claims 8-12 and cancelled claim 7.

New claim 13 is presented as corresponding to elected Group I, Species I. This claim is based on claim 7 but the "means for transmitting" has been removed. Thus, the basis for distinguishing between Groups I and II in the Restriction

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Requirement no longer applies. Examination of existing claims 1-6 and new claim 13 is respectfully requested.

Applicant believes that the above remarks are fully responsive to the Office Action dated August 29, 2005. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Steven M. Mitchell at (408) 522-6101.

Pursuant to 37 C.F.R. 1.136(a)(3), Applicant hereby requests and authorizes the U.S. Patent and Trademark Office to (1) treat any concurrent or future reply that requires a petition for extension of time as incorporating a petition for extension of time for the appropriate length of time and (2) charge all required fees, including extension of time fees and fees under 37 C.F.R. 1.16 and 1.17, to Deposit Account No. 22-0265.

Respectfully submitted,

Dated: 9/15/05

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